

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-290

August 1, 2000

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Reorganization
And Of Affiliated Interest Transactions In
Connection With The Provisioning of Certain
Maintenance, Construction and Engineering Services

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Bangor Hydro Electric Company (BHE) proposes to provide certain maintenance, construction and engineering services through a new affiliate. In this initial order, we concur with BHE's classification of these services as non-core within the meaning of Chapter 820 of our rules.

II. PROCEDURAL HISTORY

On March 27, 2000, BHE filed a Petition for Reorganization and Exemptions Pursuant to 35-A M.R.S.A. § 708 and for Affiliated Interest Transaction Approvals and Exemptions Pursuant to 35-A M.R.S.A. § 707. In its petition, BHE asked that the Commission authorize BHE to form a separate subsidiary in which to provide maintenance, construction and engineering (MC&E) activities. Alternatively, BHE requested that the Commission determine that the services at issue are core services, and are therefore not subject to the requirements of Chapter 820. After the issuance of a Notice of Proceeding, the Public Advocate, Central Maine Power Company (CMP) and S/L Construction¹ (S/L) intervened in this case.

The Commission held an initial case conference and technical conference on May 25, 2000. BHE and CMP participated in the conference. The Examiner adopted BHE's suggestion made in its filing that the case be bifurcated so that the Commission

¹ The Examiner initially considered that S/L Construction sought interested person status rather than intervenor status. At the initial case conference, the Examiner notified conference participants that S/L's interested person status might change to intervenor status if S/L clarified that it sought intervenor status. BHE had no objection either to this process or to S/L's possible intervention. In a subsequent oral communication, a representative from S/L clarified that S/L sought intervenor status. The Examiner suggested that S/L file a letter clarifying that it is seeking intervenor status. Although S/L did not file that letter, it did file a letter indicating its views on BHE's provision of the services at issue in this case. Based on S/L's original letter, as clarified, the Examiner granted S/L's petition to intervene.

could first consider whether the activities at issue are core or non-core activities within the meaning of Chapter 820 of our rules. At the conference, the Commission's Advisory Staff (Advisors) requested additional information, to which BHE responded in writing. In a June 7, 2000 amended petition, BHE proposed that certain MC&E services that it expects to provide to third parties be considered non-core services. Based on its proposed distinction, BHE questioned whether the case should continue to be bifurcated. The Examiner ruled that the bifurcation should continue because all parties may not agree with the core/non-core distinction made by BHE. BHE and CMP filed briefs on the classification of the activities as core or non-core. The Public Advocate did not file a brief on this preliminary question. An Examiner's Report issued on July 14, 2000.

III. CHAPTER 820: DEFINITIONS OF CORE AND NON-CORE SERVICE

Chapter 820 of the Commission Rules defines non-core service as "any service provided by an electric or gas utility, or any affiliate of an electric or gas utility, that does not meet the definition of core utility service, *de minimis* service or mutual aid service." Chapter 820 § 2(K). Mutual Aid Service is defined as

service that meets the definition of core service when provided within a utility's own service territory but that is provided temporarily outside the utility's service territory for the sole purpose of assisting another utility in meeting its service obligations.

Chapter 820 § 2(J). Chapter 820 classifies as *de minimis*,

[a] service for which the investment does not exceed 0.1% of the utility's capitalization and total gross revenues received from providing that service do not exceed 0.1% of the utility's annual gross revenues.

Chapter 820 § 2(E). Finally, Chapter 820 defines core utility service as

the generation, transmission or distribution of electricity or gas, services necessary to perform those functions, services for which the utility is the provider of last resort or services the Commission requires the utility to provide, except that any service that a utility provides outside its service territory is not a core service.

Chapter 820 § 2(C).

IV. POSITIONS OF THE PARTIES

In its amended filing, BHE proposes to offer the following maintenance, construction and engineering (MC&E) services through an affiliate, NewCo:

1. any maintenance, construction and engineering services provided outside of BHE's service territory, except mutual aid services as defined in Chapter 820.
2. any maintenance, construction and engineering services provided in connection with private distribution lines located within BHE's service territory and not provided through BHE's P.L.U.S. program² or through other tariff provisions.
3. any maintenance, construction and engineering services provided in connection with private transmission lines and substations, with the exception of services relating to MEPCO and Chester SVC facilities, which are owned by BHE and are pursuant to arrangements the Commission has previously approved as part of BHE's core activities.

BHE has provided one concrete example of an anticipated non-core MC&E service. It states that it expects "to bid on a current project being undertaken by Great Northern Paper, Inc. (GNP) to upgrade and construct privately owned transmission lines and related substation facilities located in the East Millinocket/Millinocket Region." Original Petition at 2. BHE does not anticipate using these GNP facilities except for the purpose of providing back-up service to GNP. On the other hand, non-core MC&E services would not include those necessitated by, or central to, BHE's performance of its transmission and distribution functions or those provided according to a Commission-approved tariff.

BHE argues that the three categories of MC&E activities specified above should be considered non-core within the meaning of Chapter 820. BHE does not seek classification of these activities as *de minimis*. It acknowledges that these activities may exceed the *de minimis* threshold. Moreover, the described activities specifically exclude mutual aid activities. BHE claims, however, that the activities at issue do not fit within the definition of core activity because (1) they are not necessary for BHE to carry

² BHE's Private Line Utility Support (P.L.U.S.) program is provided pursuant to Section 14 of BHE's Terms and Conditions.

out its function as a provider of electricity transmission and distribution; (2) the services at issue are not services for which BHE is the provider of last resort and (3) the Commission has never required BHE to provide these types of services. BHE further argues that the phrase, "services necessary to perform the functions of generation, transmission or distribution of electricity or gas" in Section 2(C) of Chapter 820 means service necessary for the utility providing the ancillary service to perform its transmission or distribution function rather than service necessary for some other party to perform these functions.

CMP argues that all MC&E services should be considered core utility services because Chapter 820 includes as core services those that are necessary to provide generation, transmission and distribution services but does not specify that the provider of such generation, transmission and distribution and the utility providing the necessary services must be the same entity. CMP reads Chapter 820 to "allow a public utility to provide services to an unaffiliated third party and treat those services as core so long as the services are necessary for the third party to perform *its* generation, transmission or distribution functions." CMP Brief at 2-3 (emphasis in original).

S/L appears to argue against allowing BHE to participate in the MC&E activities outlined in BHE's amended petition. It does not specifically address whether these activities should be considered core or non-core other than to make clear that the activities at issue are in competition with those provided by S/L. S/L also appears concerned that utilities should not have any undue advantage in offering such services.

V. DISCUSSION

We agree with BHE that the activities at issue should be considered non-core within the meaning of Chapter 820. Clearly the activities described in the amended petition are commercially available. This is made evident by S/L's intervention in the case. Thus, BHE would not be a provider of last resort of the MC&E services. We also agree with BHE that the first two phrases of the definition of core services in Chapter 820 both refer to the utility providing the service, not some other entity. Chapter 820 focuses on utility requirements for participating in non-core activities. Thus, the definition of "core utility service" (through which, by process of elimination, the non-core determination is made) necessarily refers to activities by the utility.

In addition, the Notice of Rulemaking for Chapter 820 removes any ambiguity about the intent of the phrase "services necessary to perform those functions." In the Notice of Rulemaking we stated that the proposed rule "does not exclude from the definition of core services customer services that are related to, or necessary for, *the provision of the utility's monopoly function* if those services are available on a competitive basis unless the utility provides the service outside of its service territory." *Requirements for Non-Core Utility Activities and Transactions Between Affiliates* (Chapter 820), Docket No. 97-886, Notice of Rulemaking at 5 (Dec. 4, 1997) (emphasis added). The rulemaking history, as well as a common sense reading of the rule, thus

support BHE's conclusion that the MC&E activities described by BHE are not services necessary to support BHE's utility functions. We, therefore, reject CMP's construction of this section of Chapter 820.

VI. CONCLUSION

We conclude that the activities outlined by BHE are non-core activities within the meaning of Chapter 820. In the second phase of this case, we will consider BHE's reorganization and affiliated transaction requests. We direct the Examiner to establish procedures to expeditiously process these requests.

Dated at Augusta, Maine, this 1st day of August, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond